REMARKS

This election and amendment is in response to the Office Action dated February 22, 2006 ("Office Action"). Claims 1-28 are pending; claims 4, 14 and 28 have been amended. No new matter has been added. Examination of the claims in view of the ensuing remarks is respectfully requested.

Claim 4 has been amended to clarify that the method is for producing "*a cell culture matrix composition.*" The claim has also been amended to clarify that the method includes "*creating the cell matrix composition by converting the biological material into a tissue powder that is included in the cell culture matrix composition.*" Support for this amendment may be found throughout the Specification; for example, on page 4, lines 22-23 and page 5, lines 24-26.

Claims 14 and 28 have been amended to clarify that the methods are for "*using a cell culture matrix composition.*" Claim 14 has also been amended to clarify that the method involves "*providing a cell culture matrix composition*" and suspending the cells in a medium with "*the cell culture matrix composition wherein the cell culture matrix composition comprises a tissue powder derived from a biological material...*" Claim 28 has been similarly amended to clarify that the method involves "*providing a cell culture matrix composition*" and suspending the cells in a medium with "*the cell culture matrix composition wherein the cell culture matrix composition comprises a tissue powder derived from a full and intact whole organ...*" Support for these amendments may be found throughout the Specification; for example, on page 4, lines 13-14 and page 7, lines 1-24.

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In the Office Action, Examiner required an election among aspects of the claimed invention as described in Groups I, II and III under 35 U.S.C. §121. These groups include the following:

I. Claims 1, 3, and 23-27, drawn to a cell culture matrix composition, classified in class 424, subclass 93.1;

II. Claims 2-8 and 10-13, drawn to a method of producing a tissue powder, classified in class 435, subclass 41; and

III. Claims 14-20 and 22-28, drawn to a method of producing a cell matrix, classified in class 435, subclass 1.1.

Applicants hereby elect Group I, drawn to a cell culture matrix composition, for prosecution on the merits. This election reads on claims 1, 3 and 23-27.

The foregoing election notwithstanding, Applicants respectfully traverse the restriction requirement and submit that it is improper. Examiner cites to 35 U.S.C. § 121 as the basis for the restriction requirement; yet that section permits restriction only when (a) inventions are independent or distinct, and (b) *there is a serious burden on the Examiner.* MPEP § 803.

Examiner indicates that the claims are directed to three groupings of patentably distinct inventions. Examiner cited MPEP §806.05(f) and found that groups I and III are related as a process of making and a product made and that the product claimed can be made by another process. Examiner found that groups I and II are related as a process of making and a product made, but the product comprises tissue which may be prepared by a different process that does not require a step for suspending cells. Examiner also found that groups II and III are drawn to processes of making two different products and require different steps.

Applicants respectfully submit that a search of the prior art with respect to the groups enumerated by Examiner would not constitute an undue burden. Without a serious burden, restriction is improper. Indeed, Examiner has already conducted a substantive search and examination as evidenced by the prior office actions of

December 14, 2004, and August 11, 2005. Thus, Applicants respectfully submit that there is no undue burden for Examiner to continue to examine the entire set of claims.

Additionally, Applicants respectfully note that the Groups I and III are related as a product and a process of using the product, respectively. Groups I and II are related as a product and a process of making the product, respectively. Groups II and III are related as a process of making and a process of using the product, respectively.

Furthermore, the claims of Groups II and III each require all the limitations of the corresponding independent product claims of elected group I; for example, claims 1 and 27. Applicants respectfully submit that claims 1, 3, and 23-27 are each allowable. Therefore, despite the fact that Applicants believe that the restriction is improper, if Examiner is inclined to maintain the restriction requirement, Applicants submit that, at a minimum, the non-elected embodiment of their invention described in Groups II and III must be rejoined and fully examined for patentability under 37 CFR 1.104 (MPEP §§821.04 and 821.04(b)). Moreover, to the extent that the restriction requirement was improper as between Groups I and III, as between Groups I and II, and as between Groups II and III, Applicants respectfully submit that the non-elected embodiments of their invention described in Groups II and III must also must be rejoined and fully examined for patentability.

For the foregoing reasons, Applicants respectfully request that Examiner withdraw the restriction requirement as between the three groupings and respectfully request further, favorable action on the merits.

Therefore, Applicants submit that the non-elected embodiments of their invention, including Groups II and III, drawn to a method of producing a cell culture matrix composition and a method of using a cell culture matrix composition, respectively, are entitled to consideration as provided by 37 CFR 1.141.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (213) 633-6800.

Respectfully submitted,

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